United Overseas Bank Ltd v Wong Hai Ong

HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO 24–208–98–I
IAN CHIN J
16 DECEMBER 1998

Civil Procedure *— Judgment — Reciprocal enforcement of judgments — Setting aside registration of foreign judgment — Whether enforcement of judgment contrary to public policy of Malaysia — Reciprocal Enforcement of Judgments Act 1958 s 5(1)(a)(v)*

Civil Procedure *— Service — Foreign writs of summons — Whether writ issued by Singapore High Court may be served in Malaysia by private agent*

On 13 March 1996, United Overseas Bank Ltd ('the plaintiff') offered to lend US$2m to the defendant, an agreed term of which was that the defendant should submit to the jurisdiction of the Singapore courts. Later, an action was commenced in the Singapore High Court against the defendant for recovery of the debt ('the Singapore action'). The Singapore High Court made an order for service out of jurisdiction, and the writ and statement of claim were served on the defendant personally in Kuching by the plaintiff's agent. Subsequently, judgment in default of appearance was entered ('the Singapore judgment'), which judgment was registered in the High Court of Sabah and Sarawak. The defendant made no attempt to set aside the Singapore judgment. The defendant applied to set aside the registration of the Singapore judgment, inter alia, on the following grounds, ie that: (a) the Singapore High Court lacked jurisdiction since the defendant had never voluntarily submitted to its jurisdiction prior to or during the proceedings of the suit by the plaintiff and the defendant had never been resident in Singapore and had never had an office or place of business in Singapore; and (b) the writ was not duly served on the defendant.

Held, allowing the application:

(1) The defendant could not contend that the Singapore High Court had no jurisdiction over the Singapore action as the plaintiff had granted the banking facilities subject to the term that the defendant should submit to the jurisdiction of the Singapore courts, which term was accepted by the defendant. Thus, pursuant to s 5(2)(a)(iii) of the Reciprocal Enforcement of Judgments Act 1958, the Singapore High Court was deemed to have jurisdiction when the defendant agreed to submit to its jurisdiction (see pp 478I and 479A–F).

(2) The Malaysian Supreme Court had ruled in *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 that the service of a Malaysian legal process in a foreign country through a private agent was not valid as it constituted the exercise of the judicial powers of the Malaysian

courts beyond their territorial limits. Similarly, Malaysian courts should not accept the exercise of a foreign jurisdiction in Malaysia by the service of a foreign legal process in Malaysia through a private agent (see pp 482I and 483A–G); *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 followed.

(3) Order 11 r 3(8) of the Singapore Rules of Court provided for the service of Singapore legal process in Malaysia which was by a Malaysian judicial officer. That was the only permissible method of service other than the method under O 65 of the Rules of the High Court 1980 ('the RHC'). The fact that service by a private agent was not expressly prohibited by O 65 of the RHC did not mean that the Singapore O 11 r 3(8) need not be complied with. In so far as the Singapore O 11 r 3(8)(a) was concerned, it could not be read as allowing the service of a writ in Malaysia by a private agent as that was only allowed in Malaysia in respect of processes originating in Malaysia (see pp 483H–I and 484B).

(4) Section 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 permitted the registration of a foreign judgment to be set aside if the enforcement of that judgment would be contrary to the public policy of Malaysia. Malaysia's public policy should be to protect its sovereignty and it would be contrary to such policy to allow the enforcement of the Singapore judgment, the registration of which should thus be set aside (see p 484C–D).

[Bahasa Malaysia summary

Pada 13 Mac 1996, United Overseas Bank Ltd ('plaintif') telah menawarkan pinjaman sebanyak AS$2 juta kepada defendan, yang mana suatu terma yang dipersetujui adalah bahawa defendan akan menyerah kepada bidang kuasa mahkamah Singapura. Kemudiannya, satu tindakan telah dimulakan di Mahkamah Tinggi Singapura terhadap defendan untuk mendapat balik hutang itu ('tindakan Singapura'). Mahkamah Tinggi Singapura telah membuat satu perintah untuk penyampaian luar bidang kuasa, dan writ serta pernyataan tuntutan telah disampaikan kepada defendan sendiri di Kuching oleh ejen plaintif. Berikutnya, penghakiman ingkar kehadiran telah dimasukkan ('penghakiman Singapura'), yang mana penghakiman tersebut telah didaftarkan di Mahkamah Tinggi Sabah dan Sarawak. Defendan tidak membuat sebarang percubaan untuk mengetepikan penghakiman Singapura. Defendan memohon untuk mengetepikan pendaftaran penghakiman Singapura, antara lain, atas alasan-alasan berikut, iaitu bahawa: (a) Mahkamah Tinggi Singapura kekurangan bidang kuasa memandangkan defendan tidak pernah menyerah kepada bidang kuasanya secara sukarela sebelum atau semasa prosiding guaman tersebut oleh plaintif dan defendan tidak pernah menetap di Singapura dan tidak pernah mempunyai pejabat atau tempat perniagaan di Singapura; dan (b) writ tidak disampaikan kepada defendan seperti yang sepatutnya.

Diputuskan, membenarkan permohonan:

(1) Defendan tidak boleh menghujahkan bahawa Mahkamah Tinggi Singapura tidak mempunyai bidang kuasa ke atas tindakan Singapura kerana plaintif telah memberikan kemudahan perbankan tertakluk kepada syarat bahawa defendan haruslah menyerah kepada bidang kuasa mahkamah Singapura, yang mana syarat itu telah diterima oleh defendan. Justeru itu, menurut s 5(2)(a)(iii) Akta Penguatkuasaan Salingan Hukuman 1958, Mahkamah Tinggi Singapura telah dianggap mempunyai bidang kuasa apabila defendan bersetuju menyerah kepada bidang kuasanya (lihat ms 478I dan 479A–F).

(2) Mahkamah Agung Malaysia telah memutuskan dalam *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 bahawa penyampaian proses guaman Malaysia di negara asing menerusi ejen persendirian tidak sah kerana ia merupakan pelaksanaan kuasa kehakiman mahkamah Malaysia melampaui had wilayah mereka. Begitu juga, mahkamah Malaysia tidak harus menerima pelaksanaan bidang kuasa asing di Malaysia oleh penyampaian proses guaman luar negeri di Malaysia menerusi ejen persendirian (lihat ms 482I dan 483A–G); *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 diikut.

(3) Aturan 11 k 3(8) Kaedah-Kaedah Mahkamah Singapura memperuntukkan penyampaian guaman Singapura di Malaysia iaitu menerusi seorang pegawai kehakiman Malaysia. Itu merupakan satu-satunya cara penyampaian yang dibenarkan selain daripada cara di bawah A 65 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Hakikat bahawa penyampaian oleh seorang ejen persendirian tidak dilarang secara nyata oleh A 65 KMT tidak bermakna bahawa A 11 k 3(8) Singapura tidak perlu dipatuhi. Sejauh mana A 11 k 3(8)(a) Singapura adalah berkenaan, ia tidak boleh dibaca sebagai membenarkan penyampaian writ di Malaysia oleh ejen persendirian kerana ituhanya dibenarkan di Malaysia berhubung dengan proses yang bermula di Malaysia (lihat ms 483H–I dan 484B).

(4) Seksyen 5(1)(a)(v) Akta Penguatkuasaan Salingan Hukuman 1958 membenarkan pendaftaran penghakiman asing diketepikan sekiranya penguatkuasaan penghakiman itu adalah bertentangan dengan polisi awam Malaysia. Polisi awam Malaysia haruslah untuk melindungi kedaulatannya dan adalah bercanggahan dengan polisi sedemikian untuk membenarkan penguatkuasaan penghakiman Singapura dalam kes ini, dan pendaftarannya dengan itu seharusnya diketepikan (lihat ms 484C–D).]

Notes

For cases on reciprocal enforcement of judgments, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2637–2638.

A For cases on service generally, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4069–4160.

Cases referred to

Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors [1997] 2 SLR 496 (refd)

B *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 (folld)

Legislation referred to

C Exchange Control Act 1958
Reciprocal Enforcement of Judgments Act 1958 s 5(1)(a)(ii), (v), (2)(a)(iii), (3)(a)
Rules of Court O 11 rr 3(8), 3(8)(a), (4) [Sing]
Rules of the High Court 1980 O 11 rr 4, 5(8), 6, O 65

D *Tan Thiam Teck* (*Reddi & Co*) for the plaintiff.
Idris Abdullah (*Idris & Co*) for the defendant.

Cur Adv Vult

Ian Chin J:

E *Introduction*

This is an application by Wong Hai Ong ('the defendant') to set aside the registration on 24 August 1998 of a Singapore High Court judgment dated 20 May 1998 that was obtained by United Overseas Bank Ltd ('the plaintiff'). The grounds of the application are stated in these terms:

F (a) That the High Court Suit No 286 of 1998 of the Republic of Singapore had no jurisdiction in so far as the defendant had never voluntarily submitted to the jurisdiction of the High Court of the Republic of Singapore prior to or during the proceedings in Suit No 286 of 1998 and the defendant had never been resident in Singapore and he has never had an office or place of business in the Republic of Singapore.

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(b) That the enforcement of the judgment would be contrary to public policy in Malaysia in so far as at all material times the defendant had, contrary to the provisions of the Exchange Control Act 1958 not obtained the prior written permission of the Controller of the Foreign Exchange (who is also the Governor of Bank Negara) for the opening of the account with the plaintiff and neither had the plaintiff nor the defendant obtained the prior written permission of the said Controller of Foreign Exchange for the credit facilities granted by the plaintiff to the defendant. As such the opening of the account and the granting of banking facilities were illegal being contrary to the provisions of the Exchange Control Act 1958 and contrary to public policy in Malaysia and the respective notices issued thereunder.

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Another reason was put forth and argued and that was that the writ was not duly served on the defendant. My decision will be in respect of this ground and ground (a).

Facts of the case

On 13 March 1996, the plaintiff in a letter addressed to the defendant in Kuching offered to lend the defendant US$2m which the defendant accepted. It was an agreed term that the defendant submitted to the jurisdiction of the Singapore courts. The loan limit was on 16 December 1996 increased to US$4m and then on 25 March 1997 to US$5m. Action was commenced on 27 February 1998 in the Singapore High Court and the writ and statement of claim were served on the defendant personally in Kuching on 3 April by the plaintiff's agent. This was after the Singapore High Court had made an order for service out of jurisdiction in these terms:

1 the plaintiffs have leave to serve a sealed copy of the writ of summons filed on 27 February 1998 in respect of this action on the defendant at 2nd Floor, Lot 142, Bangunan WSK, Jalan Abell, 93100 Kuching, Sarawak, Malaysia;

2 the time for the entry of an appearance in this action by the defendant be 21 days after the service of the said writ of summons, inclusive of the day of service; and

3 the costs of this application be costs in the cause.

Judgment in default of appearance was on 20 May entered for the following sums:

(1) RM1,957,197.74 being the sum due and owing as at 24 February 1998 comprising the prinicpal sum of RM1,954,012.43, and interest of RM3,185.31.

(2) Interest on the above sum of RM1,957,197.74 at the contractual rate comprising:

(a) RM52,164 being interest calculated in accordance with paras 4(g) to 4(i) of the statement of claim from 25 February 1998 to 20 May 1998;

(b) interest calculated in accordance with paras 4(g) to 4(i) of the statement of claim from 21 May 1998 until date of full payment.

(3) Costs on a full indemnity basis.

The said judgment was, as mentioned earlier, registered in the High Court in Sabah and Sarawak. No attempt has been made by the defendant to set aside the Singapore High Court judgment.

Contentions

The first ground concerns the alleged want of jurisdiction on the part of the Singapore High Court. In this regard the Reciprocal Enforcement of Judgments Act 1958, s 5(1)(a)(ii), provides for the setting aside of the registration of a judgment if the court is satisfied 'that the courts of the country of the original court had no jurisdiction in the circumstances of the

A case'. The Act goes on to provide, under s 5(2)(a)(iii), that the courts of the country of the original court shall (subject to certain provisions in s 5(3)(a) which are not relevant to this case) be deemed to have jurisdiction if a defendant had before the commencement of the proceedings agreed to submit to the jurisdiction of that court. Clearly then, and I agree with Mr Tan Thiam Teck, learned counsel for the plaintiff, on the agreement of the B defendant, which has been set out earlier, the Singapore High Court had jurisdiction. On the other hand, Mr Idris Abdullah, learned counsel for the defendant, argued that that agreement was not enough to constitute submission to the jurisdiction and that the defendant has to take 'substantive part in the proceedings' which the defendant had not done, C citing *Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors* [1997] 2 SLR 496 as supporting that proposition of law.

The case of *Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors* concerned a guarantee which terms confer jurisdiction on the High Court Malaya and which court granted a default judgment after the writ was served in Malaysia on the defendants. The judgment was D subsequently registered in Singapore. The third defendant applied to set it aside on the grounds: (i) he did not know of the action and judgment until he was served, with notice of the registration; and (ii) the order for substituted service was not properly obtained and therefore he was not duly served which grounds did not find favour with the court. The court there said, and this was quoted in part by Mr Idris, that a defendant is also taken E to have submitted to jurisdiction if he voluntarily appeared in the proceedings or took substantive part in the proceedings other than having expressly agreed in advance to submit to jurisdiction. I am therefore unable to see how it can be said that that case decided that unless a defendant had taken a 'substantive part in the proceedings' he had not submitted to the F jurisdiction. In fact, the case did say that you could have a prior agreement to submit to jurisdiction. I do not see how it can be argued otherwise when s 5(2)(a)(iii) says that the court shall be deemed to have jurisdiction when a defendant has agreed to submit to the jurisdiction.

It was next contended by Mr Idris that the writ was not served in compliance with O 65 r 2 of the Rules of the High Court 1980 ('the RHC') G since the service was by a process server through a private arrangement rendering the default judgment a nullity and consequently the registration of it bad. In order to apprise that argument O 65 has to be examined and is reproduced here:

H 1 Definition

In this Order 'process' includes a citation.

2 Service of foreign legal process

(1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal I requesting service on a person in Malaysia of any such process sent with the letter is received by the Minister and is sent by him to the High Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(3) Subject to paragraph (4) and to any written law which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server.

(4) Where an application in that behalf is made by the Attorney General, the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of the affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate in Form 144 —

(a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

(b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the High Court regulating the service of process of the Court in Malaysia or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying that the cost of effecting, or attempting to effect, service is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be sent to the Minister.

3 Service of foreign legal process under Civil Procedure Convention

(1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in Malaysia of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Malaysia of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter or request must be accompanied by a copy of a translation of the process to be served in English.

(3) Subject to any written law which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the

process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The Registrar shall give a certificate certifying —

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified; and

(b) that the cost of effecting, or attempting to effect, service is the amount so specified.

(6) The certificate given under paragraph (5) shall be sealed with the seal of the High Court for use out of jurisdiction and shall be sent to the consular or other authority by whom the request for service was made.

4 Costs of service, etc to be certified by Registrar

A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to the Registrar who shall certify the amount properly payable in respect of those costs.

It is clear to me that O 65 of the RHC governs the position where a letter of request from a foreign tribunal requesting service had been received by the Malaysian minister concerned and who had sent the same to the High Court with an intimation that the request be acceded to. Order 65 does not cover cases where there is no letter of request from a foreign tribunal. The learned authors in *Malaysian High Court Practice* (Vol 1, 1998 Ed) pp 4424–4454 are of the view that provision does not restrict the service of a foreign process by private agent. That view will be examined to see if it is correct. That view leads me to ask the question of whether the service of a foreign process by a private agent in Malaysia, infringes on the sovereignty of Malaysia? In this regard *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* [1992] 2 MLJ 146 (SC) is relevant. In that case one of the issues was whether it was proper for the court to permit the service of a third party notice on a foreign defendant at an address in New York through an agent. The registrar in that case ordered: (i) that the local defendant be at liberty to issue a third party notice against the foreign defendant; and (ii) that the local defendant be at liberty to serve the said third party notice on the foreign defendant at a specified address in New York, USA through the agents of the local defendant there. The Supreme Court there said (at p 151):

> As regards the particular procedural point mentioned at the outset, it concerns the actual method of service of the notice of the writ out of jurisdiction after an order of service out of jurisdiction is granted. This is provided by O 11 r 6 in particular, depending on whether or not there subsists the Civil Procedure

Convention in that foreign country where the service out of jurisdiction is intended to be effected. In the instant appeal, it was common ground and we accepted that in the USA, there did not subsist the Civil Procedure Convention, therefore O 11 r 6(2) applied. The service of the notice of writ herein would have to be effected through the Government of the USA or through our Malaysian consular authority contrary to what was ordered and done in this case, as stated above.

The rationale behind this prescribed method of service is of course that our courts do not exercise their judicial powers beyond their territorial limits, and further service of judicial process in a foreign country, to use the grave words of Lord Denning in *Afro Continental Nigeria Ltd v The Meridian Shipping Co SA* [1982] 2 Lloyd's Rep 241 is an exercise of sovereignty in that country, which can only be done with the consent of that country.

Scrutton LJ in *Vaudrey v Nathan* [1928] WN 154, when advising circumspection in exercising power to allow service out of jurisdiction, opined that in some countries service out of jurisdiction to be effected there was looked upon with great disfavour.

It is possible that the Civil Procedure Convention if held or signed in future could contain methods of service less demanding on our foreign missions than as set out in O 11 r 6(2), eg even by the method of service as ordered by the learned registrar and upheld by the learned judge, with our present world having shrunk in these days and times and boundaries of nations consequently having been regarded with a more realistic pitch of fever.

We therefore held that the part of the learned registrar's order providing for service on the foreign defendant by the agents of the local defendant ought to be set aside.

To sum up, we therefore upheld the leave granted to issue the third party notice herein but set aside the service out of jurisdiction in question. Since the appellant (the foreign defendant) had succeeded on one out of two of its grounds of appeal, we decided that it should be awarded half the costs here and in the court below.

Thus, the Supreme Court had imposed on our legal process the obligation to respect the sovereignty of a foreign country by insisting that service must be by the procedure prescribed by O 11 of the RHC. In so far as Singapore and Brunei are concerned, there is the less cumbersome service provision of O 11 r 5(8) which says:

> Where the defendant is in Singapore or Brunei, the notice of a writ may be sent by post or otherwise by the Registrar to the Magistrate, Registrar, or other appropriate officer of any Court exercising civil jurisdiction in the area in which the person to be served is said to be or to be carrying on business for service on the defendant, and if it is returned with an indorsement of service and with an affidavit of such service, it shall be deemed to have been duly served.

Even in the special case of Singapore and Brunei Darussalam, it must still go through officialdom in the person of the judicial officer of Singapore or Brunei though not the government of those countries or the Malaysian consular authorities. Should the court in Malaysia then accept what is regarded as an exercise of a foreign jurisdiction in Malaysia by the service of a foreign legal process through a private agent when our Supreme Court

had in *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* ruled that such a method of service of our legal process in a foreign country is not valid? I do not see how I can accept that. I am of the view that all foreign countries should hearken to the decision in *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* and should not make valid any method of service of legal process that *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* had ruled invalid.

Our O 11 r 5(8) allows service of our legal process in Singapore or Brunei Darussalam through the judicial officer of the courts there. This provision I presume must have been the result of an agreement between the three countries as otherwise requests for service would not have been met. Singapore had until recently a similar reciprocal provision (numbered similarly) with regard to service in Malaysia and Brunei Darussalam until it was amended. The present relevant Singapore Rules of Court is O 11 r 3(8) which says:

> Where the defendant is in Malaysia or Brunei Darussalam, the originating process —
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> (a) may be served in accordance with Rule 4; or
>
> (b) may be sent by post or otherwise by the Registrar to the Magistrate, Registrar or other appropriate officer of any court exercising civil jurisdiction in the area in which the person to be served is said to be or to be carrying on business for service on the defendant, and if it is returned with an endorsement of service and with an affidavit of such service, it shall be deemed to have been duly served.

That rule is dissimilar to the relevant Malaysian provision in that it has prescribed an additional method of service in para (a), which is the method spelt out in O 11 r 4. Again, this Singapore O 11 r 4 is similar to the Malaysian O 11 r 6 except that it provides, with regard to countries like Malaysia and Singapore (which do not subscribe to a Civil Procedure Convention), for an additional method of service, viz: 'by a method of service authorized by the law of that country for service of any originating process issued by that country'. It is this additional provision that is relied upon as authorizing the service by a private agent (instead of through the judicial officer) which method when employed for the service of a Malaysian legal process in a foreign country had been held by *Sunkyong International Inc v Malaysian Rubber Development Corp Bhd* to be invalid as it amounted to the exercise of judicial power beyond its territorial limit.

In my view there is absolutely no reason why service of the legal process of Singapore or Brunei Darussalam cannot and should not be done through the special provision of the Singapore O 11 r 3(8) which is by our judicial officer and that, in my view, is the only permissible method of service other than the method under O 65. The fact that service by an agent is not expressly prohibited does not mean that the Singapore O 11 r 3(8) need not be complied with. That provision and O 65 are enacted for observance and not to be ignored, and, implicitly, all other methods of service will not be allowed since it amounts to the exercise of the jurisdiction of the Singapore courts in Malaysia. Therefore, in my respectful view, the said opinion

expressed in this regard by *Malaysian High Court Practice* (Vol 1, 1998 Ed) at pp 4424–4454 is not correct. A

In so far as the Singapore O 11 r 3(8)(a) is concerned, it cannot be read as allowing the service of the writ in Malaysia by a private agent as that is only allowed in Malaysia in respect of processes originating in Malaysia and not foreign process. B

There remains the question of whether the failure to serve the foreign legal process in accordance with the said rules can be a ground for setting aside the registration of the judgment. The relevant provision would, in my view, be s 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 which permits the registration of a foreign judgment to be set aside if the enforcement of that judgment 'would be contrary to public policy in Malaysia'. It goes without saying that Malaysia's policy like that of every other country is to protect its sovereignty and to expect foreign countries to respect it. For this purpose, the said rules had been enacted for the service of foreign legal process. It would be contrary to the public policy of Malaysia to condone a breach of the said rules. Therefore, it would be contrary to public policy in Malaysia to allow the enforcement of a judgment that was obtained consequent upon a failure to observe the said rules. C D

It was mentioned that the defendant should have taken action in Singapore to set aside the service and since he had not done so, he should not be allowed to challenge the validity of the service, citing *Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors* [1997] 2 SLR 496. No doubt he could do that but the failure to do so does not mean that this court is precluded from considering and taking into account the fact that the service of the writ was in breach of the said rules and that it would be contrary to Malaysia's public policy to enforce such a judgment. There is more to it than just the right of the defendant. It is a matter affecting the sovereignty of Malaysia and the observance of the said rules. This is a matter which the said Act allows the court to take into consideration irrespective of whether action had been taken to set aside the service. It does no injustice to the plaintiff as all they need to do is to have the said judgment set aside and then to serve the writ through the proper channel and in accordance with the Singapore O 11 r 3(8) or O 65. E F G

Since on this ground alone it would constitute sufficient reason to set aside the registration of the judgment I do not propose to go into the other ground concerning the alleged illegality.

Conclusion H

In the premises, I allow the application of the defendant by way of the summons in chambers dated 18 September 1998 with costs to the defendant and I order that the registration of the judgment be set aside.

Application allowed with costs. I

Reported by Wong Siok Chin